IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 2ND APRIL 2007 / 12TH CHAITHRA 1929

CRL.A.No. 1388 of 2004(A)

SC.71/2000 of ADDL. DISTRICT & SESSIONS JUDGE FAST TRACK COURT NO.II (ADHOC), THIRUVANANDAPURUM
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APPELLANT: ACCUSED

MOHANAN, S/O. MADHAVAN,
P.P.IX 632, CHARUVILA VEEDU,
CANARA PAZHAYAKKUMMUMMEL VILLAGE.

BY ADV. SRI.BLAZE K.JOSE

RESPONDENTS:

THE STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
REPRESENTING THE CIRCLE INSPECTOR OF POLICE
KILIMANOOR POLICE STATION.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

Crl.Appeal No.1388 OF 2004

Dated 2nd April, 2007

JUDGMENT

Koshy,J.

Appellant is the accused in S.C.No.71 of 2000 on the file of the Court of Additional District and Sessions Judge, Fast Track (Adhoc) No.II, Thiruvananthapuram. He was found guilty for offence punishable under Section 302 of the Indian Penal Code and convicted and sentenced to undergo imprisonment for life with a fine of Rs.50,000/=. Allegation of the prosecution is that the appellant murdered his own brother-in-law, husband of his sister (PW2). It is the prosecution case that at about 6 a.m. on 4.1.1999 there was an altercation between the accused and deceased in connection with the latter's attempt to sell the trees in the property of the brother and mother of the accused without his consultation. Out of that enmity and with the intention to cause his death, the accused stabbed Vikraman with a rubber tapping knife at about 7.30 a.m. on 4.1.1999 at the way leading to the house of Vikraman by saying that "I will not spare you hereafter". Vikraman was declared dead when he was taken to the casualty of the Medical College Hospital, Thiruvananthapuram at about 9 a.m. Brother of the deceased, PW1, reported the incident at about 11 a.m. on 4.1.1999 and gave Ext.P1 F.I. Statement.

Inquest was conducted at about 2 p.m. on the same day. Accused was arrested on 8.1.1999 and the tapping knife alleged to be used in the murder was recovered from the property of one Shahul Hameed on the basis of the confession statement given by the accused. At the time of his arrest the accused was wearing the very same dress worn at the time of the incident and that was also recovered. PW1, admittedly, is not an eye witness. But, the details of the allegations by the prosecution is mentioned in Ext.P1 itself.

2. PW2 is the wife of the deceased. She deposed that the accused is her brother. On 4.1.1999 there was an altercation between him and her husband in the shop of Gopalan when her husband went there for supplying milk. She was informed about that incident by her husband on his return from the shop and while he was in the courtyard of their house by telling about the incident, the accused was found coming through the way leading to their house and the accused called her husband by telling that he has kept something for him. Though herself and their children prevented her husband, he went there and at that time the accused stabbed on the upper inner side of his right arm and on the right side of the abdomen with a rubber tapping knife (MO1). Then her husband sat on the ground and the

accused again stabbed him with MO1 knife. She further deposed that immediately she took her husband to the Medical College Hospital, Thiruvananthapuram and on examination at 9 a.m. he was declared dead. In cross examination she explained that on sustaining the stab her husband sat on the ground, thereafter stood up and ran towards the property of Thankamony which is situated on the south eastern side of the portion of the way at which he was again stabbed and he fell unconscious in the property of Thankamony. The main point in the cross examination was that on the way to the hospital she did not inform the police about the incident and only after returning from the hospital she sent a close relative for giving Ext.P1 F.I. Statement. But, it is to be remembered that after her husband was stabbed, she was with her husband for saving his life, though declared dead when they reached the hospital, and there is nothing wrong in not informing the police on the way to the hospital. Her husband was declared dead at 9 a.m. Immediately, through a close relative, the matter was informed to the police within two hours of the death. Even though the F.I. R. reached on the next day, inquest was conducted on the same day.

3. PW3 is the daughter of the deceased. She also saw the incident. She was standing along with her mother

and evidence of PW3 fully supported the evidence of PW1. PW4 is another daughter of the deceased. She saw the accused running towards her house with the rubber tapping knife which is identified as MO1. PW5 saw the accused running from the place of incident with the knife. PW11 who is a neighbour deposed that hearing the cry of PW2 he reached the spot and found Vikraman lying in the lap of his wife and at that time Vikraman and his wife were in the property of Thankamony. The motive alleged was that one of the brothers of PW2 was ill. The property was being enjoyed by the accused and another sister. The deceased tried to sell the trees therein apparently for treating the brother of PW2 which was disliked by the accused. Here, there is a clear ocular evidence of wife and daughter of the deceased. The wife of the deceased was none other than the sister of the accused. It is true that motive was proved only by oral evidence, but, evidence of PWs 2 and 3 is fully supported by PWs 4 and 5.

4. Now we will come to the medical evidence. PW9 doctor conducted postmortem examination. Eleven ante-mortem injuries were noted as follows:

> "1) Incised penetrating wound, square bracket in shape 2.5 x 0.9 cm., the side limbs being 0.5 x 0.3 cm. each

directed inwards, vertical on the left side of front of trunk 4 cm. below costal margin and 3.5 cm. to left midline. The abdominal cavity was seen penetrated and the stomach and pancreas transfixed. The wound was directed backwards, downwards and to the right for a total minimum depth of 3.5 cm. The abdominal cavity contained 1200 ml. Of fluid blood and 150g of blood clot.

2) Incised wound 2.4 x 0.5 x 2 cm., square bracket in shape with each side limb being 0.5 x 0.3 cm. directed downwards horizontal on the ineer and back aspect of right arm 10 cm. below armpit.

3) Incised wound 0.9 x 0.3 x 0.5 cm. on the inner aspect of right arm 1 cm. below the outer end of injury No.2.

4) Incised wound 5 x 0.2 cm., oblique on the right side of front of trunk, its lower inner end to the right of midline and 4 cm. below lower end of breast bone.

5) Incised wound 5 x 0.2 cm., oblique on the right side of front of chest its upper inner end 5 cm outer to lower end of breast bone.

6) Two incised wounds 3 x 0.2 x 0.2 cm., 1.5 cm. apart oblique on left side of front of trunk 12 cm. outer to umbilicus.

7) Multiple small abrasions over an area 15 x 4 cm. on the back of right elbow and forearm.

8) Graze abrasion 4 x 1 cm. oblique on the right side of front of trunk its lower inner end 13 cm. below the top of hip bone.

9) Multiple small abrasions over an

area 4 x 2 cm. on the outer aspect of right thigh 13 cm. below the top of hip bone.

10) Abrasion 1 x 1 cm. on the outer aspect of middle of right thigh.

11) Abrasion 1 x 1 cm. on the front of left knee."

The doctor stated that injury No.1 has caused his death and that injury was sufficient in the ordinary course of nature to cause death. During cross examination the doctor categorically stated that MO1 can cause the injuries mentioned in the postmortem certificate. Vital part of the body was inflicted with injuries. Even though two injuries were spoken by PWs 2 and 3, more injuries were seen in the postmortem certificate. But, the doctor stated that main injuries are the two injuries mentioned by them. It is also pertinent to note that MO1 knife recovered on the basis of the disclosure statement of the accused contained human blood and the dress of the accused worn at the time of the arrest and at the time of the incident also contained blood. Considering the ocular evidence corroborated by evidence of PW5, recovery and medical evidence, trial court found that the accused was guilty. We see no ground to interfere with the above finding. On the basis of the clear and clinching evidence, we are

unable to give benefit of doubt to the accused as pleaded by the counsel for the appellant. We see no ground to interfere with the conviction and sentence imposed on the appellant.

The appeal is dismissed.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

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